

**CITY OF UPLAND
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of November 1, 2021 by and between the City of Upland, a public agency organized and operating under the laws of the State of California with its principal place of business at 460 N. Euclid Avenue, Upland, CA 91786 ("City"), and Utility Cost Management, LLC, a limited liability company with its principal place of business at 1100 W. Shaw Avenue, Suite 126, Fresno, California 93711 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Utility Bill Auditing Services (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit "A." In the event of any conflict between the terms of this Agreement and that of Exhibit "A", the terms of this Agreement shall govern.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with Section 7 of Exhibit "A".

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). This Agreement shall end on the completion of service or **November 1, 2024**, whichever is the earliest, unless extended by written amendment. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; pandemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a

provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

a. PERS Eligibility Indemnification

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury

- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the

"Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Reserved.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Bernardino, State of California.

17 Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. Upon termination, Consultant will cease all work on behalf of City. However, if termination occurs after Consultant has sent its Findings Letter to City, then City will remain obligated to pay Consultant, pursuant to this Agreement, for any refunds, credits or Future Savings that were identified in the Findings Letter and that are thereafter obtained by City. Consultant may continue to obtain and review City's utility billing and other information following termination in order to periodically verify whether City has obtained a refund, credit or Future Savings that was identified in the Findings Letter. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

18 Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

19. Organization

Consultant shall assign Chris Wiehl as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

20. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

21. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

DISTRICT:
City of Upland
460 N. Euclid Avenue
Upland, CA 91786
Attn: City Manager

CONSULTANT:
Utility Cost Management, LLC
1100 W. Shaw Avenue
Suite 126
Fresno, California 93711
Attn: Chris Wiehl

and shall be effective upon receipt thereof.

22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF UPLAND
AND UTILITY COST MANAGEMENT, LLC**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF UPLAND

By: _____



Stephen Parker
Acting City Manager

UTILITY COST MANAGEMENT, LLC

By: _____

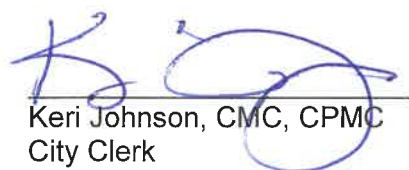
Its: _____

Printed Name: _____


Vice President
Chris Wiehl

ATTEST:

By: _____


Keri Johnson, CMC, CPMC
City Clerk

**(Two Signatures of Corporate Officers
Required For Corporations)**

By: _____

Its: _____

Printed Name: _____



VP of Operations
Scott Predmore

EXHIBIT A

UTILITY BILL AUDITING SERVICE AGREEMENT

[ATTACHED]

AGREEMENT TO PROVIDE
UTILITY BILL AUDITING SERVICE

This agreement is made by and between Utility Cost Management LLC ("UCM") and the entity signing below ("Client") as follows:

1. **Applicable to Client's Utility Accounts.** This Agreement applies to electricity accounts (and any related utility user taxes, other taxes, assessments, surcharges or fees) with respect to which Client:
 - (a) is receiving utility service as of the Effective Date (as defined below),
 - (b) has received utility service within three years prior to the Effective Date,
 - (c) receives utility service within one year after the Effective Date, or
 - (d) has permitted or authorized UCM to obtain a copy of the utility bill.The electric accounts described in this paragraph are hereinafter referred to as "Utility Accounts". The "Effective Date", as that term is used above, is the first day of the calendar month after both UCM and Client have signed this Agreement.
2. **Client to Provide Utility Bills.** On or promptly after Client's execution of this Agreement, Client will provide UCM with a copy of at least one month's utility bills for all of Client's Utility Accounts.
3. **UCM Authorized to Obtain Information on Utility Accounts.** UCM is hereby authorized to obtain information relating to the Utility Accounts directly from utility provider personnel and utility provider web sites. If site visits are necessary, UCM will first obtain proper authorization from Client.
4. **UCM's Findings Letter.** UCM will use its best efforts to identify the basis for any refunds, credits or Future Savings (as defined below) on Client's Utility Accounts. UCM will send a "Findings Letter" to Client that generally sets forth the basis for any refunds, credits or Future Savings identified by UCM. UCM may, from time to time, supplement or amend its Findings Letter, and such supplement or amendment will be deemed to have occurred on the date the original Findings Letter was sent to Client.
5. **Steps to Obtain Refunds or Savings.** UCM is authorized by Client to take steps to obtain the refunds, credits or Future Savings identified in the Findings Letter. Such steps may include, but are not limited to, communicating, negotiating and dealing with utility providers (or, in the case of utility user taxes or other governmental charges, the appropriate government entity), and seeking relief from the California Public Utilities Commission in a complaint proceeding or other proceeding.
6. **Cooperation By Client.** Client will cooperate with UCM, as reasonable, in UCM's efforts to carry out the purposes and intent of this Agreement. Such cooperation will include, but not be limited to, providing information upon request by UCM concerning Client's utility expenditures, utility service and operations.
7. **UCM's Compensation.**

UCM's compensation will consist of the amounts set forth in both (a) and (b) below.

- (a) **Refunds or Credits.** If Client receives a refund or credit that was identified in the Findings Letter, then Client will pay to UCM 42% of the amount refunded or credited. The amount of the refund or credit for this purpose will include all amounts refunded or credited (including any portion attributable to interest) for any overcharges that were incurred by Client prior to the date that the overcharges no longer appeared on the Client's utility bill. Payment of UCM's 42% compensation is due within 30 days of the date UCM mails an invoice to Client.
- (b) **Future Savings.** If Client obtains Future Savings that were identified in the Findings Letter, then Client will pay UCM 42% of such Future Savings that accrue during a Three-Year Savings Period. "Future Savings" is the amount by which Client's charges on its Utility Accounts are reduced as a result of a change in the billing rate, calculation, method or procedure. Future Savings will be calculated as the difference between the amount Client was billed on its Utility Accounts during the Three-Year Savings Period, and the amount that it would have been billed on its Utility Accounts during the Three-Year Savings Period if there had been no change in its billing rate, calculation, method or procedure. The Three-Year Savings Period begins on the date that the change in the billing rate, calculation, method or procedure is first reflected on Client's utility bill, and ends three years thereafter. UCM will submit invoices periodically to Client for payment based on the Future Savings as they accrue. The invoices will

verify (a) that Future Savings have actually been realized by Client, and (b) the amount of such Future Savings. Payment of UCM's invoices is due within 30 days of the date the invoices are mailed to Client. The compensation under this subparagraph will not include compensation for Future Savings that are: (a) the result of a reduction in the amount of utility usage by Client, or (b) the result of Client's utilization of a different utility supplier that provides lower cost utility service.

(c) **No Compensation for Pending Claim.** Client is not obligated to pay UCM pursuant to this paragraph for any refund, credit or Future Savings received by Client for which Client had submitted to the utility provider a written claim prior to the date of UCM's Findings Letter. However, Client is obligated to pay UCM pursuant to this paragraph whether or not Client knew of the basis for the refund, credit or Future Savings prior to the date of UCM's Findings Letter, and whether or not Client's receipt of the refund, credit or Future Savings was the result of steps taken by UCM or others, including attorneys.

8. **If Client Is Not Utility Customer.** By providing a copy of any utility bill to UCM, Client is thereby agreeing that the Utility Account represented by such bill will be governed by this Agreement, regardless of whether or not Client is the Utility Customer with respect to such Utility Account. For purposes of this Agreement, the Utility Customer is the entity that (i) is named on the Utility Account as reflected by the utility bill, (ii) receives the utility service on the Utility Account, (iii) pays for or is liable for the charges on the Utility Account, or (iv) is the owner of the property at which the utility service is provided on the Utility Account. If Client is not the Utility Customer for a Utility Account then, with respect to that Utility Account, Client represents that it is signing this Agreement in its capacity as agent for the Utility Customer, and as such is authorized to legally bind the Utility Customer to the terms of this Agreement. Client further agrees that the terms of this Agreement will be equally binding on both Client and Customer, that all references in this Agreement to "Client" will also be deemed to be references to the Utility Customer, and that Client and the Utility Customer will be jointly and severally liable for payment of UCM's compensation under this Agreement.
9. **No Legal Services.** Client acknowledges and understands that: (1) Only an attorney can provide legal services or advice, (2) UCM is not an attorney or law firm, and does not and will not provide legal services or advice, (3) UCM does not and will not act as an attorney for Client or any other person, (4) Nothing in this Agreement, and no act, omission or statement by UCM, or its owners or employees, will be construed to create an attorney-client relationship between UCM and Client or any other person, (5) UCM is not subject to the California Rules of Professional Conduct, which govern the conduct of attorneys, and (6) Client should consult an attorney if it wishes to receive legal services or advice.
10. **Disclosure of Information.** UCM may obtain information that pertains to Client's business, operations, or affairs, including but not limited to its utility charges and utility usage. Client expressly authorizes UCM to use and disclose such information to others as necessary or convenient to carry out the services contemplated by this Agreement. Other than expressly set forth in this section, all information provided by Client or obtained by UCM hereunder shall not be disclosed to any person or entity without the prior written consent of Client.
11. **Release of Claims Against UCM.** Client acknowledges and agrees that UCM has made no express or implied representation or warranty that it will be successful in obtaining any refunds, credits, or Future Savings on Client's Utility Accounts. Client hereby waives, releases and forfeits any current or future claim against UCM that is based upon or relates to any failure by UCM to identify or obtain refunds, credits, or Future Savings to which Client may be entitled, or that is based upon or relates to any services or advice provided by UCM, unless the action for damages is based on UCM's sole negligence or willful misconduct.
12. **Representations Made By Client.** It may become necessary for Client to make certain representations to the utility provider or other entity in order obtain refunds, credits or Future Savings identified by UCM in its Findings Letter. Client hereby warrants that any such representations made by Client will be true and correct in all respects. Client understands and agrees that it is Client's responsibility, and not UCM's, to ensure that any such representations made by Client are true and correct in all respects. Client will indemnify and hold UCM harmless for any loss, damage, injury or claim arising from or related to any false or allegedly false statements made by Client to the utility provider or other entity in connection with any refund, credit or Future Savings identified by UCM.
13. **Late Payment Penalty.** If payment of any invoice is not received by UCM within 30 days of the date the invoice was mailed, then interest on the amount owing will accrue, beginning on the 31st day after the invoice was mailed to Client, at the rate of 3% per month (prorated on a daily basis). In addition, if any payment is not received by UCM within 60 days of the date the invoice was mailed to Client, then a fee equal to 10% of the amount owing (including any accrued

interest) will be imposed on the 61st day after the invoice was mailed. Interest will continue to accrue at 3% per month (prorated on a daily basis) on the entire amount due until paid in full.

14. **Paragraph References.** A reference to a “paragraph” of this Agreement includes both the numbered paragraph, as well the subparagraphs, if any, that are part of such paragraph. Subparagraphs are designated by lower case letters (e.g., “(a)”, “(b)”, “(c)”).
15. **Interpretation.** In construing this Agreement, no consideration shall be given to the fact or presumption that any party had a greater or lesser hand in drafting of this Agreement.
16. **Signor Authorized to Bind Client.** The individual signing this agreement on behalf of Client hereby represents and warrants that he/she is authorized to sign on behalf of the Client and to legally bind Client to the terms of this Agreement.